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24131	7590	04/01/2005	EXAMINER	
LERNER AND GREENBERG, PA			HARMON, CHRISTOPHER R	
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APR 02 2005  
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 10/089,705  
Filing Date: June 03, 2002  
Appellant(s): BEYRICH ET AL.

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Alfred Dassler  
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/02/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-11.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US Patent No. 4,719, 739 (Foldesi) 1-1998

US Patent No. 4,682,463 (Foldesi) 7-1987

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Foldesi (US 4,719,739).

Foldesi discloses an apparatus for continuously heat sealing containers and forming of cut out membranes 26 by punch assembly 132. The membranes 26 are carried through membrane star wheel (cam 90; follower 86; drive hub 52; vacuum heads 80) to containers on star wheel 48; see figures 1 and 6. The membranes 26 are transferred to the membrane star during a dwell or resting period and then advanced to the sealing carrousel 48 during a movement phase of the star wheel.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foldesi (US 4,719,739) in view of Foldesi et al. (US 4,682,463).

Foldesi '739 do not disclose a feed angle of approximately 30 degrees or double cutting tool however Foldesi '463 teach membrane web 182 is at a feed angle (approximately 30) to the cutting/punching station 184. The cutting device 100 is a triple cutting tool however Foldesi recognizes the substitution of a double cutting device; see column 10, lines 54-59. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Foldesi in the invention of Foldesi in order to provide for alternate cutting procedures.

#### **(10) Response to Argument**

The rotatable transfer station of Foldesi comprises upper membrane star with drive hub 52 which vacuum heads 80 are mounted upon; see figure 2. Transfer of cut membranes 26 are effected at pick up station (lowermost position of vacuum head 80 in figure 1) and transported to a downstream sealing station during a movement phase of the membrane star. The sealing carrousel 48 (see figures 1 and 2) is below the membrane star, which accepts membranes 26 upon containers 20 and further transports both products together after the sealing process, thus are transferred and controlled by sealing carrousel 48 before passed along to wheel 118.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a dwell period for centering the membrane above the container) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The limitation of advancing membranes to the sealing carrousel during a movement phase is anticipated. The membrane star advances the cut membranes from a pick up transfer station to a sealing station during a rotational movement phase. Nothing in the limitation speaks to the period of alignment etc. or dwell period. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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March 21, 2005

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